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ABSTRACT

This manual is intended to provide schools with guidance in complying with federal laws and regulations regarding record keeping and confidentiality in their services to students with disabilities. Part 1 focuses on requirements of the Family Education Rights and Privacy Act (FERPA), which ensures student/parent access to education records and limits disclosures to others. It provides definitions and then summarizes requirements concerning access rights, fees, and prior consent. Fourteen common questions relative to records and confidentiality are answered next. The exceptions to prohibiting disclosure of educational records are highlighted and include a letter from the Department of Education that addresses the issues of transmitting records by fax or computer. Part 2 then addresses issues of privacy and confidentiality relating to working with children with disabilities, including general rules for maintaining confidentiality and protecting the privacy of student special education records. An article, "Privacy of School Records: What Every Teacher Should Know" by Timothy S. Hartshorne and Lyman W. Boomer is included. Part 3 focuses on special education records and considers staff training, content of special education files, acceptance of special education records, case manager/record locator, and record destruction. Sample forms are provided. Part 4 presents the text of the federal regulations to FERPA. (Contains 10 references.) (DB)

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ED 471 215

PRIMER FOR

Maintaining Accurate Special Education Records and Meeting Confidentiality Requirements When Serving Children With Disabilities

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Family Educational Rights and Privacy Act (FERPA)

September 2002

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Part 1

This section contains information regarding the basic requirements of student record keeping and ensuring confidentiality.

Item 1 — FERPA Basics

Item 2 — Overview of the Family Education Rights and Privacy Act

Item 3 — Common Question and Answers

Item 4 — Exceptions to Record Disclosure

Item 5 — Policy Guidance on Electronic Transfer of Information

FERPA Basics—Education Records

The following ten issues are important in understanding the requirements of the Family Educational Rights and Privacy Act:

1. FERPA is the Family Educational Rights and Privacy Act; the law outlines the requirement of educational record keeping.

2. Personally identifiable information about students must be kept confidential by schools.

3. Each school district must have a written educational records policy.

4. Parents have the right to inspect and review their children's school records and can request copies.

5. Access to student records by school staff members must be recorded on an "access" log in each student's file, and the school records policy must identify by title the staff members with access to each type of student record.

6. Release of student information outside the school requires parental consent, except (1) school district defined "directory information" (2) within the public school system, and (3) in health and safety emergencies.

7. Parental access rights transfer to adult students when they reach age of majority.

8. Parents may request an amendment of records that they consider "inaccurate, misleading, or in violation of the student's rights of privacy or other rights."

9. Notes concerning a student made by a staff member, retained by that person, and not shared with anyone are exempt from parental access.

10. Education records do not include treatment records of students 18 years or older that are maintained by a health professional.

OVERVIEW OF REGULATIONS

By far the most important Federal statute impacting student records is FERPA, enacted in 1974 to assure student/parent access to education records and to limit disclosures to others for unauthorized purposes. The records of students with disabilities will also be subject to IDEA and Section 504 of the Rehabilitation Act and their regulations and policy interpretations. Finally is State law; most States will have their own requirements setting forth access procedures, copying fees, form of records, retention and destruction schedules.

DEFINITIONS

Director Information: information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to, the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended.

Disclosure: to permit access to or the release, transfer, or other communication of education records, or the personally identifiable information contained in those records, to any party, by any means, including oral, written, or electronic means.

Education Records: those records that are directly related to a student, contain personally identifiable information, and are maintained by the school district or institution or by a party acting for the agency or institution. The term does not include sole possession records of instructional supervisory and administrative personnel provided that the record is kept in the sole possession of the maker of the record and is not accessible or revealed to any other person except a temporary substitute for the maker of the record.

Eligible Student: a student who has reached age of majority or is attending an institution or post-secondary education.

Records: any information recorded in any way, including, but not limited to, handwriting, print tape, film, microfilm, and microfiche.

FERPA AND CONFIDENTIALITY

FERPA was enacted to ensure the confidentiality of personally identifiable information in education records and to guarantee parents access to their child's education records. The statute defines "education records" that are subject to its requirements, specifies who can see them and under what conditions, and contains procedures for complaints.

Any educational agency or institution receiving funds under any federal program is subject to FERPA. Practically speaking, therefore, all public elementary and secondary schools and institutions of post-secondary education and many private schools are subject to FERPA.

FERPA WAS ENACTED BECAUSE:

1. Schools had denied parents access to their child's school records, while allowing others—government agents and prospective employers access.

2. Types of information contained in school records was not always confined to fact or derived for educational purposes; innuendo and gossip were often noted.

3. Right of access to student school records varied widely from State to State, controlled largely by common law principles, rudimentary case law, and local policy.

RIGHTS

Parent Rights under FERPA. Either parent has the right to inspect and/or review their student's education record unless the school district or institution has been provided with evidence that there is a court order or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights. (FERPA 99.4)

Student Rights under FERPA. When a student reaches age of majority, the rights accorded to, and consent required of, parents under FERPA transfer from the parents to the student. (FERPA 99.5)

SCHOOL DISTRICT REQUIREMENTS

Each school or educational agency must:

1. *Adopt an education records policy* and implement procedures that meet the standards of FERPA 99.6;

2. *Annually notify parents and students* in attendance of their rights pertaining to student records according to FERPA 99.7;

3. *Maintain a permanent file on each student;*

4. *Maintain separate special education records;*

5. *Provide public notice of directory information* and provide parents an opportunity to refuse to disclose such information.

ACCESS RIGHTS

The school shall permit a parent to inspect and review the education records of the student. The school shall comply with a request for access to records within a reasonable period of time, but in no case more than 45 days after it has received the request.

FEES

A school may charge a fee for a copy of an education record unless the imposition of a fee effectively prevents a parent from exercising the right to inspect and review the student's education records.

PRIOR CONSENT REQUIRED FOR DISCLOSURE

The parent shall provide a signed and dated written consent before a school discloses personally identifiable information from the student's education records, except as provided in FERPA 99.31.

PRIOR CONSENT NOT REQUIRED FOR DISCLOSURE

A school may disclose personally identifiable information from an education record of a student without the written consent of the parent if the disclosure is:

1. To officials of another school or institution in which the student seeks to enroll provided that the school has a notice in its policies that it forwards education records on request to a school in which the student seeks or intends to enroll;

2. For directory information if the school has given public notice to parents of students in attendance of the types of information that the school has designated as directory information. A parent has the right to refuse to let the agency or institution designate any or all of those types of information about the student as directory information;

3. To organizations conducting studies for or on behalf of educational agencies or institutions to develop, validate, or administer predictive tests, administer student aid programs, or improve instruction provided that the personally identifiable information is destroyed when no longer needed for the purposes for which the study was conducted;

4. To comply with a judicial order or lawfully issued subpoena if the school or institution makes a reasonable effort to notify the parent of the order or subpoena in advance of compliance.

Disclosure without parent consent may also be made under certain other conditions identified in FERPA 99.31.

RECORD OF ACCESS

A school shall maintain a record of each request for access to and each disclosure of information from the education records of each student. The record must include the date of access, the person's name, and the purpose for accessing the record.

A record of access does not apply if the request was from or the disclosure was to the parent, eligible student, authorized school official, a party with written consent from the parent, or a party seeking directory information.

DISCLOSURE TO FEDERAL AND STATE OFFICIALS

Authorized Federal and State officials may have access to education records in connection with an audit or evaluation of Federal or State supported education programs or for the enforcement of or compliance with Federal legal requirements that relate to those programs. (FERPA 99.35)

DISCLOSURE FOR HEALTH AND SAFETY

A school may disclose information from an education record to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. (FERPA 99.36)

AMENDMENT

When a parent believes the information contained in the student's education record is inaccurate, misleading, or in violation of the privacy or other rights of the student, the parent may ask the school to amend the record. If the school decides not to amend the record, the parent shall be informed of their right to request a hearing under FERPA 99.21, 99.22

COMPLAINT AND ENFORCEMENT

A person may file a complaint regarding an alleged violation under FERPA by writing the Family Policy Compliance Office, U.S. Department of Education, Washington, D.C. 20202-4605 (FERPA 99.60-99.64)

FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT
(FERPA)

QUESTIONS AND ANSWERS RELATIVE TO RECORDS AND CONFIDENTIALITY

1. **Question:** **Are schools required to comply with FERPA?**

   Answer: Any school that receives Federal education funds from the United States Department of Education must follow the procedures required by this Federal law. Reference 41 CFR 99.1

2. **Question:** **What kinds of student records are parents allowed to review?**

   Answer: FERPA applies to all records, files, documents and other materials that contain information directly relating to a student and are maintained by the school district. Reference 41 CFR 99.3

3. **Question:** **May students see the same records as parents?**

   Answer: No. While FERPA permits students to see their own records if they are over 18, there are some records that can be withheld:

   (1) Psychiatric or "treatment" records (Students can, however, request that a doctor of their choice review the records for them.)

   (2) Financial records of their parents
   Reference 41 CFR 99.12

4. **Question:** **If requested, when does the school show the records to parents?**

   Answer: Under FERPA, the school has 45 calendar days to comply with the parents' request. Some schools have written procedures that establish a shorter time period. In this case, the school must comply with their shorter time period. Reference 41 CFR 99.11

5. **Question:** **May parents bring someone with them, such as their child or a friend, to examine the records?**

   Answer: Yes. While FERPA does not state specifically that parents have this right, other federal regulations (IDEA) state that parents may authorize others to see the records. The school may ask that parents sign a statement indicating that the friend has such permission. Reference 34 CFR 300.562

6. **Question:** **Who else may see a student's records without parental consent?**

Answer: (1) School officials in the same district with a "legitimate educational interest;"

(2) School officials in another school system in which the student intends to enroll;

(3) Various State and national educational agencies when enforcing Federal laws;

(4) Anyone to whom the school must report information as required by State statute;

(5) Accreditation and research organizations helping the schools;

(6) Student financial aid officials; and

(7) Those with court orders or subpoenas. Reference 41 CFR 99.31

7. **Question:** **May probation officers see student records without parental consent?**

Answer: Under federal law, probation officers cannot see or receive information from student records without obtaining parental consent.

8. **Question:** **May parents see a list of everyone who has asked for and received information concerning their child during the year?**

Answer: Yes. The school is required to keep a list of everyone who requests and receives information with the records themselves. Parents have a right to this information. The list needs not include school employees who have seen the records. Reference 41 CFR 99.32

9. **Question:** **If parents think information is misleading or false, how can they get such information removed from the student's record?**

Answer: First, the parents request that such information be removed and state the reason for the request. If the school refuses to do so, then the parent can request a hearing. The request should be put in writing and sent to the appropriate school official. At the very least, the parent can request the school insert their written statement explaining reasons why they believe the records are inaccurate. Reference 34 CFR 300.564, 34 CFR 300.567, 34 CFR 300.568, 34 CFR 300.569, 41 CFR 99.20, 41 CFR 99.21 and 41 CFR 99.22.

10. **Question:** **Who has access to the student's confidential records?**

Answer: Parents have the right to inspect and review the records of their child. Students who have reached the age of majority also have the right to review their records. State education agency staff and school personnel who are authorized to inspect records are those certified personnel and school board members with a *legitimate educational interest* in reviewing the records. For persons not so authorized to review records, the school must keep a log of parties obtaining access to student records showing the name of the person given access, date access was given, and the purpose for which the party was authorized to use the records. Reference 34 CFR 300.562, 34 CFR 300.571, 41 CFR 99.11, 41 CFR 99.30, 41 CFR 99.31, and 41 CFR 99.32

11. **Question:** **Do school board members have a right to know the names of students with disabilities?**

Answer: They have a right to the names of individual students with disabilities only for the purpose of carrying out duties of the School Board. Reference 41 CFR 99.31 and 41 CFR 99.32

12. **Question:** **When a request for transfer of records of a student with disabilities is received, including proper parental permission, should the school transfer all records?**

Answer: On notification of transfer, all the student's educational records shall be transferred, including behavioral records and reports contained in the cumulative file furnished to the sending school by other private or public agencies. Reference 41 CFR 99.31

13. **Question:** **Are parents entitled to review their child's test protocols?**

Answer: Yes. The school must permit the parents of a student with a disability to inspect and review any educational records relating to their child, including test protocols. The procedure of allowing parents to examine and discuss the protocols in the agency office under supervision would comply with the basic requirement under Reg. 300.562(a). Reference 34 CFR 300.562(a)

14. **Question:** **Who is responsible for storage of student test protocols?**

Answer: The school is responsible for ensuring that test protocols are accessible regardless of where they are stored. Family Educational Rights and Privacy Act defines educational records as those which are "(1) directly related to a student, and (2) are maintained by an educational agency or institution or by a party acting for the agency or institution." A school psychologist would be considered "a party acting for" the school district; therefore, records maintained by a school psychologist would be accessible. Reference 41 CFR 99.5

SUMMARY

FERPA provides parents a clear avenue through which they might ensure that the personal dignity and confidential information concerning their child is protected. It is clearly the intent of this law to provide parents a definite role in the provision of accurate record keeping and in the protection of the confidential information concerning their child.

Exceptions to Prohibiting Disclosure

The following situations allow disclosure of educational records:

- Written consent
- Internal communication
- Medical or psychiatric emergency
- Court order
- Crime at program/against personnel
- Research/audit
- Abuse
- Qualified service organizations
- Third party payers

The next three pages is a letter from the U.S. Department of Education that addresses the issues of transmitting records by fax or computer.

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

MR 24 1995

Mr. John Copenhaver
Director
Mountain Plains Regional Resource Center
Utah State University
1780 North Research Parkway, Suite 112
Logan, Utah 84321

Dear Mr. Copenhaver:

This is in response to your April 4, 1995, inquiry regarding requirements related to special education records. Your letter, which you addressed to Dr. Tom Hehir, Office of Special Education Programs, was forwarded to this Office for response on June 28, 1995, because we administer the Family Educational Rights and Privacy Act (FERPA), which relates to your concerns.

You ask in your letter whether it is "permissible to transfer special education student records by fax or computer networks." In this regard, you state:

> It is not uncommon to see special education student records transferred from one agency to another via fax or computer networking.

You also ask whether it is permissible to include notices that a student is receiving special education services in a student's cumulative file. You state:

> Many school districts insert a notice in the student's cumulative file indicating there is a separate special education file located in another office.

FERPA generally protects parents' and students' privacy interests in "education records." The term "education records" is defined as those records which contain information directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution. 34 CFR § 99.3 "Education records." FERPA applies to all education records, including the records of students who receive special education services.

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Our mission is to ensure equal access to education and to promote educational excellence throughout the nation.

FERPA does not generally address what education records a school may or may not maintain or where the school maintains such records. Thus, under FERPA, a school would not be prohibited from placing a notice in a student's cumulative records which states that the student receives special education services and that another file exists in another office.

With regard to your question regarding the transfer of education records, FERPA generally requires that a parent or eligible student[1] provide written consent prior to the disclosure of personally identifiable information from education records, except in certain specified circumstances. 34 CFR §§ 99.30 and 99.31. For instance, prior written consent is not necessary when the disclosure is to a school official within the educational agency or institution with legitimate educational interest or when the disclosure is to a school in which the student is seeking or intending to enroll. See 34 CFR § 99.31(a)(1) and (2). For a list of the circumstances under which nonconsensual disclosures may be made, please refer to § 99.31 of the enclosed regulations.

FERPA does not generally address the manner in which education records may be disclosed. While on its face FERPA does not prohibit the transfer of education records to authorized parties by whatever means a school chooses, a school should take into consideration the potential for nonconsensual disclosures of education records resulting from a particular type of transfer. While we believe that the likelihood of an improper disclosure of education records that would result from transferring information to other school officials within an educational agency or institution by facsimile or internal computer network is minimal, it is the responsibility of each school to determine what precautions are necessary to protect education records in compliance with FERPA.

I trust that the above information is responsive to your inquiry. In addition to the regulations, enclosed are a model student records policy and a model annual notification of rights to parents. Should you have additional questions regarding this

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[1]All rights afforded parents under FERPA transfer to the student when the student becomes an "eligible student." The term "eligible student" means a student who has reached 18 years of age or is attending an institution of postsecondary education.

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matter or FERPA in general, please do not hesitate to contact this Office directly. Our current address and telephone number are:

Family Policy Compliance Office
U.S. Department of Education
600 Independence Avenue, SW
Washington, DC 20202-4605
(202) 260-3887

Sincerely,

LeRoy S. Rooker
Director
Family Policy Compliance Office

Enclosures

Part 2

This section addresses issues of privacy and confidentiality relating to working with children with disabilities and educational records.

Item 1 — General Rules for Maintaining Confidentiality

Item 2 — Protecting the Privacy of Student Special Education Records

Item 3 — Privacy of Student Records

GENERAL RULES FOR MAINTAINING CONFIDENTIALITY
(INTERNAL COMMUNICATIONS)

The following is guidance with respect to maintaining confidentiality at public schools.

- Written or oral information about student and families is shared only with other personnel who have an explicit need to know for the benefit of the student/family (not for the benefit of the provider).
- Information about one student is not shared with another student or parent under any circumstances.
- Only necessary information will be shared with those who have an "educational interest" in the student.
- Information should not be obtained from a parent or other person based on a promise that the information so obtained will not be shared with other appropriate personnel.
- Discussions concerning confidential information are to take place in secured locations not in hallways, stairwells, staff lounges or parking lots, on the playground, or elsewhere [illegible] others may overhear.
- Confidential written documentation or notes of oral confidential communications should be stored in secure locations, and when in use, should be shielded from the view of others approaching the desk, and should not be left on a desk at all when the staff member has occasion to leave the desk.
- Confidential information should not be left as a message with a secretary, on a voice mail, or on an electronic mail system.
- Confidential information that must be mailed or carried should be placed in an envelope marked confidential.
- Confidential information received by a school that was not requested or needed should be made part of the student's/child's record and should be returned to the sender or shredded.
- Confidentiality should be maintained regardless of how the information is obtained (written, oral, electronic).
- All staff and volunteers should be held to the same standard of confidentiality.
- A school should have an explicit policy on the confidentiality of student/child information, which is coordinated with the school's records policy.

PRIVACY OF SCHOOL RECORDS

What Every Special Education Teacher Should Know

Timothy S. Hartshorne • Lyman W. Boomer

Schools gather a great deal of information, some of it highly personal, regarding each child with exceptionalities. This must be done to fulfill the requirements of the Education for All Handicapped Children Act of 1975 (EHA). When the school conducts a comprehensive evaluation, it gathers personal information on such factors as the child's health, vision, hearing, social and emotional status, level of intelligence, and academic achievement. When an individualized education program (IEP) is developed, it includes the child's level of educational performance along with annual goals and short-term objectives. The information used to make a placement decision must be documented.

Following placement, the special education teacher may conduct a curriculum-based assessment or use teaching probes to gather further information regarding the child's unique learning needs. A daily chart of the child's academic performance and a record of self-management skills may be maintained. The list goes on of tests and inventories, rating scales and checklists, and charts and records concerning each child with exceptionalities.

The problem with such information collection is the natural conflict between the individual's right to privacy and society's need for information concerning individual behavior (Stevens, 1980). To protect the privacy of students and their families while at the same time ensuring access to information by those with a legitimate interest in a child's education, Congress enacted the Family Educational Rights and Privacy Act (FERPA) in 1974. Additional safeguards were provided for children with disabilities through EHA.

This article examines issues in the disclosure of student records—the release of information regarding a child or permitting access to the child's educational records—and invasion of privacy.

WHAT INFORMATION MUST TEACHERS DISCLOSE?

Teachers are required to report known and suspected incidents of child abuse and neglect. Federal assistance for child abuse programs requires that each state enact a child abuse and reporting statute (Child Abuse Prevention and Treatment Act of 1974, 45 CFR 1340.1). Educators in all 50 states and the District of Columbia are now required to report child abuse (Meddin & Rosen, 1986), and 45 states impose criminal penalties for failure to report abuse and neglect (cited in *State v. Grover*, 1989).

The principal of a Minnesota elementary school was charged with two counts of failing to report suspected child abuse following two alleged incidents of sexual misconduct by a teacher (*State v. Grover*, 1989). The mothers of two boys informed the principal that a teacher had made sexual advances toward their sons, but the principal failed to notify police. During the investigation police discovered that the principal had also failed to report two other incidents of alleged child abuse involving the same teacher. During the trial, the principal argued that the statute requiring educators to report known and suspected instances of child abuse was unconstitutionally vague and overbroad. The Minnesota Supreme Court found otherwise. The Court held that the statute does not require the espousal of an ideological point of view, but only mandates the reporting of information. An individual making such a report would be free to indicate that while there is reason to suspect abuse, he or she does not hold a personal belief to that effect. Thus whether the principal believed them to be true or not, he was required to report the incidents.

Teachers in most states are also required to report to law enforcement officials any information communicated to them by a student that may bear on the commission of a felony. For example, if a student confides to a teacher information about violations of drug laws, that information must be reported (Overcast & Sales, 1982).

WHAT INFORMATION MUST BE SAFEGUARDED?

Teachers must safeguard educational records. An educational record is *any* form of information directly related to a child that is collected, maintained, or used by the school (FERPA, 1974, 34 CFR 99.3). An educational record may include the results of a child's psychological evaluation or the IEP. It may also include a videotape of the class taken by the teacher or an audiotape made by the teacher of a child's oral reading performance. For students under the age of 18, psychiatric hospital treatment plans may be considered educational records (Bellamy to Woodson, 1989). Any form of information collected, maintained, or used by the school that relates to a child is considered an educational record and must be safeguarded.

Records that a school district collects or uses but does not originate must also be considered an educational record under FERPA and EHA. For example, if a school were to receive a medical evaluation regarding a child and that report were placed in the child's file, the medical report would be considered an educational record (Tyrrell to Janda, 1980). Reports from juvenile court or social service agencies that the school maintains in its files are also considered educational records. Use, not origination, defines an educational record under FERPA and EHA.

WHO HAS ACCESS TO CONFIDENTIAL INFORMATION?

Parents must be permitted to inspect any and all confidential information related to their child (FERPA, 1974, 34 CFR 99.10[a]; EHA, 1975, 300.562[a]). Such inspection must be afforded without unnecessary delay and before any meeting regarding an IEP or hearing relating to the identification, evaluation, or placement of the child. In no case may access be delayed more than 45 days.

The parents may also request explanations and interpretations of their child's records from school officials. Furthermore, parents may have a representative such as an attorney inspect the records (EHA, 1975, 34 CFR 300.562[b]).

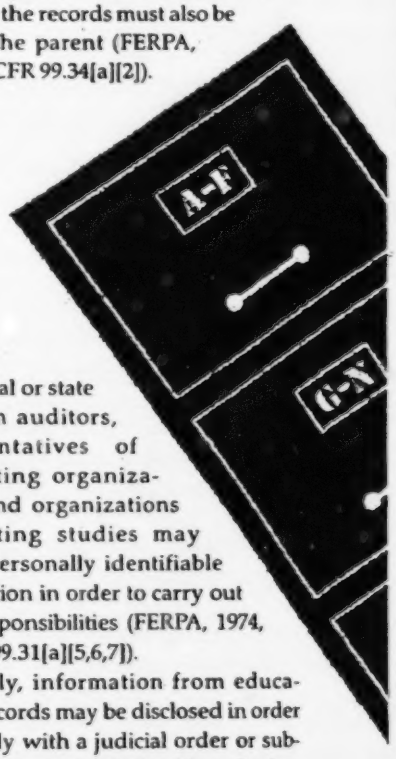
The school district is required to provide the parents with *access to*, but not necessarily *copies of* their child's educational records. If, however, a parent were unable to go to the school to inspect the records because of illness or injury, school officials would be required to provide copies of the records. A fee may be charged for copies unless it would effectively prevent parents from exercising their right to inspect the records. However, the school district may not charge an administrative fee for searching for and retrieving educational records (FERPA, 1974, 34 CFR 99.11).

Access to educational records must be afforded to custodial and noncustodial parents alike. When Robert Fay, a noncustodial parent, tried to obtain information regarding his children's school activities and educational progress, the superintendent wrote that the school system would "provide information to any person or organization whom the courts decide have a legal right to it" (*Fay v. South Colonie Central School District*, 1986, p. 24). Fay then sued the school district in federal court, alleging that he had been denied access to his children's educational records. The court found the school district liable under the Civil Rights Act of 1871 for denying Fay his statutory right under FERPA to inspect school records. The judgment, along with compensatory damages, was upheld by the Second Circuit Court of Appeals.

Students who are 18 years old or older or who are enrolled in a postsecondary educational institution, exclusive of their parents, have the right to inspect their own educational records. Parents, however, retain the right to inspect records if the student is claimed as a dependent for income tax purposes (FERPA, 1974, 34 CFR 99.31 [a][8]).

School officials, including teachers and administrators who have a legitimate educational interest, may access educational records (FERPA, 1974, 34 CFR 99.31[a][1]). The names of children with disabilities may also be disclosed to school board members if the district's policies define the board members as school officials with a legitimate educational interest (Tyrrell to Grossman, 1980).

Records may also be disclosed to officials of another school system or agency in which the child intends to enroll (FERPA, 1974, 34 CFR 99.31[a][2]). If the parent has notified the school district that the child will be transferring to another school, the child's educational records may be sent to the new school. Upon request, written notice and copies of the records must also be sent to the parent (FERPA, 1974, 34 CFR 99.34[a][2]).



Federal or state program auditors, representatives of accrediting organizations, and organizations conducting studies may access personally identifiable information in order to carry out their responsibilities (FERPA, 1974, 34 CFR 99.31[a][5,6,7]).

Finally, information from educational records may be disclosed in order to comply with a judicial order or subpoena or to protect the health and safety of the child (FERPA, 1974, 34 CFR 99.31[a][9,10]).

With written consent of the parent, personally identifiable information may be disclosed to a third party (FERPA, 1974, 34 CFR 99.30). For example, with

written consent of the parent, copies of a child's educational records may be sent to a physician. Likewise, personal information concerning a child may be discussed with a private psychologist provided that the school district has obtained prior written consent from the parent. Teachers and administrators with access to educational records may disclose information to third parties only after written consent of the parent has been obtained.

WHAT RECORD OF ACCESS MUST BE MAINTAINED?

EHA and FERPA both require that the school district maintain a record of each disclosure of personally identifiable information or request for disclosure (FERPA, 1974, 34 CFR 99.32; 300.563). The record of access must include the name of the person seeking information, the date access was given, and the purpose for which access was given. The record of access requirement does not apply to school officials, parents, students over the age of 18 or enrolled in postsecondary educational institutions, or individuals with written consent from the parent. Requests for "directory information"—information that would not generally be considered harmful or an invasion of privacy if disclosed to the public—need not be recorded.

WHAT INFORMATION MAY TEACHERS DISCLOSE?

Teachers may disclose directory information (FERPA, 1974, 34 CFR 99.3). For example, disclosure of a child's name, address, telephone number, or date and place of birth is usually considered harmless. However, disclosure of other information that would ordinarily be considered harmless may be harmful to a child with disabilities. Disclosure of the name of the child's previous school, for example, may be considered harmless enough, but disclosure that the child had previously attended a special school for children with severe emotional disturbances is an invasion of privacy of a greater magnitude.

The school district must notify parents of the information that has been designated directory information and thus subject to public disclosure. Parents may, in turn, notify the school of any or all information that should not be released without their consent (FERPA, 1974, 34 CFR 99.37). Thus, prior to disclosing even directory information, the teacher should check to verify that a child's parent has not requested that it be withheld.

WHAT INFORMATION IS NOT SUBJECT TO DISCLOSURE?

Not subject to disclosure are personal notes made by a teacher, kept in his or her sole possession, and revealed to no one except a temporary substitute teacher (FERPA, 1974, 34 CFR 99.3). For example, if a teacher kept a written record in a notebook of a child's behavioral outbursts and showed it to no one, the notebook would not be subject to disclosure. However, if the teacher shared the notebook with anyone other than a substitute teacher, the notebook would be considered an educational record.

A 4th-grade teacher in Massachusetts wrote a college term paper describing a child with disabilities in her classroom (*Alinovi v. Worcester School Committee*, 1985). The paper referred to the child by his first name only and identified no other person or place. Before the start of a reevaluation conference for the child, the teacher gave the term paper to the school district special education supervisor and told him that it might provide additional understanding of the child's special needs. The supervisor placed the paper in his briefcase but did not read it, and returned the paper to the teacher after the meeting. When the building principal asked to see the term paper, the teacher refused, claiming that the paper was private. The U.S. Court of Appeals held, however, that by taking the term paper to the reevaluation conference, the teacher had forfeited her expectation of privacy.

Private notes are just that: notes. Once they become the basis for a special education decision or intervention, they may no longer be considered private notes (FERPA, 1974, 34 CFR 300.562). Mary K. has a doctorate in counseling psychology and is qualified to administer and interpret the Rorschach Inkblot Test. When her daughter was administered the Rorschach along with other instruments by a school psychologist, Mary and her husband, John K., requested access to the verbatim Rorschach responses in order to better evaluate the school psychologist's recommendations and to possibly obtain a second opinion. The Circuit Court's ruling against the parents was overturned by the Illinois Court of Appeals (*John K. v. Board of Education for School District 65, Cook County*, 1987). The Court ruled that raw psychological test data are a part of a student's record and are subject to disclosure under Illinois law. The judge stated, "We cannot consider the verbatim transcript of [the child's] responses as [the psychologist's] `speculations, reminders, hunches, or impressions'" (p. 803).

INVASION OF PRIVACY

Justice Brandeis wrote, "The makers of our constitution...conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men" (*Olmstead v. U.S.*, 1928, p.

478). In the creation of voluminous educational records for children placed in special education, school personnel observe the children, interview them, test them, and intervene with them; they are hardly "let alone." While the rights of minors are protected by the Constitution, states still retain the power to restrict the rights of children (Fleming & Fleming, 1987). The rights of children must be balanced against specific governmental interests in the educational setting that may not be present in society at large (Stevens, 1980). Students' rights to privacy may need to be violated in the form of search and seizure when there is a reasonable suspicion of illegal behavior (Avery & Simpson, 1987); disclosure in order to provide appropriate supervision to protect other pupils from aggressive or violent behavior (Baker, 1987); reporting suspected child abuse (Meddin & Rosen, 1986); and creating, maintaining, and releasing educational records. However, to avoid infringing on the privacy rights of students, teachers should take the advice of Eades (1986) and make certain that the reports they write, the statements they make, and the records they create are *only* as required and permitted by their employment in the school.

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PROTECTING THE PRIVACY OF STUDENT EDUCATION RECORDS

Student education records are official and confidential documents protected by one of the nation's strongest privacy protection laws, the Family Educational Rights and Privacy Act (FERPA). FERPA, also known as the Buckley Amendment, defines education records as all records that schools or education agencies maintain about students.

FERPA gives parents (as well as students in postsecondary schools) the right to review and confirm the accuracy of education records. This and other United States "privacy" laws ensure that information about citizens collected by schools and government agencies can be released only for specific and legally defined purposes. Since enacting FERPA in 1974, Congress has strengthened privacy safeguards of education records through this law, refining and clarifying family rights and agency responsibilities to protect those rights.

FERPA's legal statute citation can be found in the U.S. Code (20 USC 1232g), which incorporates all amendments to FERPA. FERPA regulations are found in the Federal Register (34 CFR Part 99). FERPA's 1994 amendments are found in Public Law (PL) 103-382.

FERPA Protects Privacy

FERPA applies to public schools and state or local education agencies that receive Federal education funds, and it protects both paper and computerized records. In addition to the Federal laws that restrict disclosure of information from student records, most states also have privacy protection laws that reinforce FERPA. State laws can supplement FERPA, but compliance with FERPA is necessary if schools are to continue to be eligible to receive Federal education funds.

FERPA requires schools and local education agencies to have written and accessible policies about how they restrict the release of student records. The policies must explain parents' rights under FERPA, define what qualifies as "directory information" (personal information that can be made public), set procedures for reviewing and correcting records, and explain how and when student information can be disclosed. When students reach the age of 18, or when they become students at postsecondary education institutions, rights under FERPA transfer from the parents to the students.

FERPA gives both parents, custodial and noncustodial, equal access to student information unless the school has evidence of a court order or state law revoking these rights.

FERPA Defines an Education Record

Education records include a range of information about a student that is collected in schools, such as:

- Date and place of birth, parent(s) and/or guardian addresses, and where parents can be contacted in emergencies;
- Grades, test scores, courses taken, academic specializations and activities, and official letters regarding a student's status in school;
- Special education records;

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- Disciplinary records;
- Medical and health records that the school creates or collects and maintains;
- Documentation of attendance, schools attended, courses taken, awards conferred, and degrees earned;
- Personal information such as a student's identification code, social security number, picture, or other information that would make it easy to identify or locate a student.

Personal notes made by teachers and other school officials that are not shared with others are not considered education records. Additionally, law enforcement records created and maintained by a school or district's law enforcement unit are not education records.

Part of the education record, known as *directory information*, includes personal information about a student that can be made public according to a school system's FERPA policy. Directory information may include a student's name, address, and telephone number, and other information typically found in school yearbooks or athletic programs. Other examples are names and pictures of participants in various extra curricular activities or recipients of awards, pictures of students, and height and weight of athletes.

Each year schools must give parents public notice of the types of information designated as directory information. By a specified time after parents are notified of their review rights, parents may ask to remove all or part of the information on their child that they do not wish to be available to the public without their consent.

FERPA Guarantees Parent Review and Appeal

If, upon review, parents find an education record is inaccurate or misleading, they may request changes or corrections, and schools and education agencies must respond promptly to these requests.

Requests should be made in writing according to local policies. Within a reasonable time period, the school or agency must decide if the request to change the record is consistent with its own assessment of the accuracy of the record. If a parent's request is denied, he or she must be offered the opportunity for a hearing. If parents' disagreement with the record continues after the hearing, they may insert an explanation of their objection in the record.

FERPA's provisions do not apply to grades and educational decisions about children that school personnel make.

While parents have a right to review records, schools are not required by Federal law to provide copies of information, unless providing copies would be the only way of giving parents access. Schools may charge a reasonable fee for obtaining records, and they may not destroy records if a request for access is pending.

FERPA Restricts Disclosure of Student Records

Local education agencies and schools may release information from students' education records with the prior written consent of parents, under limited conditions specified by law, and as stated in local agencies' student records policies. The same rules restricting disclosures apply to records maintained by third parties acting on behalf of schools, such as state and local education agencies, intermediate administrative units, researchers, psychologists, or medical practitioners who work for or are under contract to schools.

A school district is required, however, to have a policy that specifies the categories of officials and parties to whom records may be released without parent consent. The policy should be readily accessible to parents for review.

Teachers and school officials who work with the students and schools to which students apply for entrance may also have access to education records without parent consent. In addition, information from students' records may be released to State and local education officials to conduct audits or to review records in compliance with Federal laws. Schools may also disclose information from education records without the consent of parents in response to subpoenas or court orders. A school official must

make a reasonable effort to notify the parent before complying with the subpoena unless the subpoena is issued to enforce a law and specifies not to notify the parent.

In emergencies, school officials can provide information from education records to protect the health or safety of the student or others.

There are cases when schools or school systems decide it is in the public interest to participate in policy evaluations or research studies. If student records are to be released for these purposes, the school or school system must obtain prior parent consent. Signed and dated written consent must:

- Specify the records that will be released;
- State the reason for releasing the records;
- Identify the groups or individuals who will receive the records.

In general, information about each request for records access and each disclosure of information from an education record must be maintained as part of the record until the school or agency destroys the education record. Outside parties receiving records must receive a written explanation of the restrictions on the re-release of information.

Additional FERPA Provisions

In 1994, the Improving America's Schools Act amended several components of FERPA, tightening privacy assurances for students and families. The amendments apply to the following key areas:

- Parents have the right to review the education records of their children maintained by state education agencies;
- Any agency or institution that inappropriately re-releases personally identifiable information from an education record cannot have access to education records for five years;
- Information about disciplinary actions taken against students may be shared, without parents' consent, with officials in other education institutions;
- Schools may release records in compliance with certain law enforcement judicial orders and subpoenas without notifying parents.

Questions? Call Your Local School System, State Agency, or the Family Policy Compliance Office

School districts, state education agencies, and the U.S. Department of Education all offer assistance about FERPA. Before contacting Federal officials, you can often get a direct and immediate response from your local or state education officials.

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NCES 96-859

Part 3

This section focuses on special education records and basic issues teachers should understand.

Item 1 — Special Education Records

Item 2 — Access to Records — Form

Item 3 — Record Location Form

SPECIAL EDUCATION RECORDS

One of the most frequent complaints of special education staff is the amount of paperwork requirements for maintaining student records. This is a valid concern and deserves guidance for special educators to help reduce unnecessary paperwork and provide techniques that would decrease time on paperwork resulting in increased time to provide direct services for students with disabilities.

Confidentiality requirements need to be understood and followed by school staff maintaining special education records. Sharing information with unauthorized individuals can lead to liability issues for the school and can violate the student's civil rights.

In many cases, special education files contain more than the required documentation to meet minimal compliance standards. The importance of proper documentation cannot be overstated; however, too much paperwork can be confusing and hide the essential documents such as the current IEP, which used to provide an appropriate educational program.

The purpose for this section is to clarify issues of record keeping and confidentiality as it pertains to students in special education programs.

STAFF TRAINING

The school should provide information and training to all school staff regarding the importance of confidentiality and proper maintenance of special education records each school year. This could include the following:

- Special education teachers
- General education teachers
- Related service providers
- Paraeducators
- Bus drivers
- Secretaries
- Administrators
- Volunteers

CONTENT OF SPECIAL EDUCATION FILES

Since many students are in special education programs for numerous school years, the special education file tends to become very bulky. A school can decide what record keeping system is best to fulfill their particular needs; however, the following suggested system seems to provide an efficient method to manage student records.

The recommendation is to create a two tier process for maintaining special education student records. The *primary* file is kept with the main service provider or case manager and contains the essential compliance documents and current IEP.

Contents of Primary File

- Access log
- Building level support team – intervention documentation (pre referral)
- Referral form
- Initial consent to evaluate/consent for reevaluation
- Multidisciplinary team report (eligibility determination)
- Current behavior management/discipline plans – ED/BD
- Initial permission for placement
- Current written notices and meeting notices

The *primary* file contains a limited amount of information and is bound in chronological order. At the end of the school year, outdated information such as the old IEP and written notices are sent to the special education director's office to be filed in the *secondary* file.

Contents of Secondary File

- Parent correspondence
- Written and meeting notices over one year old
- Outdated IEPs
- Test protocols
- Annual review minutes
- Student work samples
- Written correspondence
- Discipline notices
- Three year evaluation documentation

ACCEPTANCE OF SPECIAL EDUCATION RECORDS

Schools receive students in special education who transfer at various times during the school year. It is never advisable to serve a student until the special education records have been obtained and reviewed by the reviewing special education staff. If the team disagrees with the findings and conclusions of the sending school, they can always order, with parent notification, additional evaluations to validate past findings or provide reasons to proceed in a different direction.

CASE MANAGER/RECORD LOCATOR

It is best to assign a case manager to each student eligible for special education services. This individual would take the responsibility of storing and maintaining the student record. The case manager is usually the special education staff member who is the primary service provider. A record locator should be included in cumulative files and other student records listing a phone number, fax number and/or E-mail address that can be used by the receiving school to determine if additional records exist on the student.

RECORD DESTRUCTION

FERPA Guidance on Record Retention or Destruction

EDGAR Reg. 75.734 requires States receiving Federal education funds and their sub grantees to keep, for five years, records showing the amount of funds they received under a grant or sub grant, how they were used, and other records to facilitate an effective audit, as well as records demonstrating compliance with program requirements. IEPs and evaluation team reports are examples of documents that may be necessary to demonstrate compliance with IDEA-B requirements.

A school district must destroy personally identifiable information at the parent's request when that information is no longer needed to provide educational services. This can be accomplished by removing personal identifiers from retained records. When records are no longer needed for educational purposes, a school may separate them from active files and retain them in a special file with limited access.

Although largely complementary, IDEA regulations on student records in some respects go beyond the requirements of FERPA. For example, Reg. 300.573 requires that parents be informed when a school proposes to destroy student records. Parents must be informed of their right to request destruction of information whenever their child graduates or leaves school, and with certain exceptions, this information must be destroyed at the parent's request. The district may establish specific times, such as IEP meetings, school registration, or program completion, to inform parents that personally identifiable information is no longer required and will be destroyed.

A school, however, may retain a permanent record of a student's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed, even over parental objections. For special education students, the due process procedures should be invoked if a school resists a parental request for destruction on the grounds that records are needed to provide educational services. By contrast, when the parent challenges material in records as misleading or inaccurate, the proper response under FERPA is amendment of the records.

_____ SCHOOL
SPECIAL EDUCATION DOCUMENTATION OF ACCESS TO RECORDS

These records are **confidential** and may only be accessed by a member of the IEP team, which includes parents, classroom teacher, special education teacher, related education service staff, special education paraeducator, building administrator and special education director.

Student:_____ DOB:_____

Access Date	Person/Position Accessing Records	Purpose of Access

Each school should keep a record of persons obtaining access to special education records. The record will include the name of the person, date of access, and the purpose for which the person is authorized to use the records. Access and use of student records will follow guidelines outlined be the Family Education Records Privacy Act.

Attention!

Student Record Locator

This file may not contain all records for this student. To determine if other records exist, please call or write to:

_____School

_____Address

_____Phone Number

_____Fax

_____E-mail

Part 4

This section contains the Federal regulations of the Family Educational Rights and Privacy Act.

FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)

34 C.F.R. Part 99

SUBPART A--GENERAL

Sec. 99.1 To which educational agencies or institutions do these regulations apply?

(a) This part applies to an educational agency or institution to which funds have been made available under any program administered by the Secretary of Education that:

(1)(i) Was transferred to the Department under the Department of Education Organization Act (DEOA); and

(ii) Was administered by the Commissioner of Education on the day before the effective date of the DEOA; or

(2) Was enacted after the effective date of the DEOA, unless the law enacting the new Federal program has the effect of making Sec. 438 of the General Education Provisions Act inapplicable.

(Authority: 20 U.S.C. 1230, 1232g, 3487, 3507)

(b) The following chart lists the funded programs to which Part 99 does not apply as of April 11, 1988:

Name of program	Authorizing statute	Implementing regulations
1. High School Equivalency Program and College Assistance Migrant Program	Sec. 418A of the Higher Education Act of 1965 as amended by the Education Amendments of 1980 (Pub. L. 96-374, 20 U.S.C. 1070d-2)	Part 206
2. Programs administered by the Commissioner of the Rehabilitation Services Administration, and the Director of the National Institute on Disability and Rehabilitation Research	The Rehabilitation Act of 1973, as amended (29 U.S.C. 700, et seq.)	Parts 350-359, 361, 365, 366, 369-371, 373-375, 378, 379, 385-390, and 395
3. Transition program for refugee children	Immigration and Nationality Act, as amended by the Refugee Act of 1980 (Pub. L. 96-212, 8 U.S.C. 1522(d))	Part 538
4. College Housing	Title IV of the Housing Act of 1950, as amended (12 U.S.C. 1749, et seq.)	Part 614
5. The following programs administered by the Assistant Secretary for Educational Research and Improvement: Educational Research Grant Program. Regional Educational Laboratories Research and Development Centers. All other research or statistical activities funded under Secs. 405 and 406 of the General	Sec. 405 of the General Education Provisions Act (20 U.S.C. 1221e), and Sec. 406 of the General Education Provisions Act (20 U.S.C. 1221-1)	Parts 700, 706-708

(Note: The Secretary, as appropriate, updates the information in this chart and informs the public.)

(c) This part does not apply to an educational agency or institution solely because students attending that agency or institution receive non-monetary benefits under a program referenced in paragraph (a) of this section, if no funds under that program are made available to the agency or institution.

(d) The Secretary considers funds to be made available to an educational agency or institution of funds under one or more of the programs referenced in paragraph (a) of this section--

(1) Are provided to the agency or institution by grant, cooperative agreement, contract, subgrant, or subcontract; or

(2) Are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Pell Grant Program and the Guaranteed Student Loan Program (Titles IV-A-1 and IV-B, respectively, of the Higher Education Act of 1965, as amended).

(e) If an educational agency or institution receives funds under one or more of the programs covered by this section, the regulations in this part apply to the recipient as a whole, including each of its components (such as a department within a university).

(Authority: 20 U.S.C. 1232g)

Sec. 99.2 What is the purpose of these regulations?

The purpose of this part is to set out requirements for the protection of privacy of parents and students under Sec. 438 of the General Education Provisions Act, as amended.

(Authority: 20 U.S.C. 1232g)

(Note: 34 CFR 300.560-300.576 contain requirements regarding confidentiality of information relating to handicapped children who receive benefits under the Education of the Handicapped Act.)

Sec. 99.3 What definitions apply to these regulations?

The following definitions apply to this part:

"Act" means the Family Educational Rights and Privacy Act of 1974, as amended, enacted as Sec. 438 of the General Education Provisions Act.

(Authority: 20 U.S.C. 1232g)

"Attendance" includes, but is not limited to:
(a) Attendance in person or by correspondence; and
(b) The period during which a person is working under a work-study program.

(Authority: 20 U.S.C. 1232g)

"Directory information" means information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended.

(Authority: 20 U.S.C. 1232g(a)(5)(A))

"Disclosure" means to permit access to or the release, transfer, or other communication of education records, or the personally identifiable information contained in those records, to any party, by any means, including oral, written, or electronic means.

(Authority: 20 U.S.C. 1232g(b)(1))

"Educational agency or institution" means any public or private agency or institution to which this part applies under Sec. 99.1(a).

(Authority: 20 U.S.C. 1232g(a)(3))

"Education records"

(a) The term means those records that are:

(1) Directly related to a student; and

(2) Maintained by an educational agency or institution or by a party acting for the agency or institution.

(b) The term does not include:

(1) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;

(2) Records of a law enforcement unit of an educational agency or institution, but only if education records maintained by the agency or institution are not disclosed to the unit, and the law enforcement records are:

(i) Maintained separately from education records;

(ii) Maintained solely for law enforcement purposes; and

(iii) Disclosed only to law enforcement officials of the same jurisdiction;

(3)(i) Records relating to an individual who is employed by an educational agency or institution, that:

(A) Are made and maintained in the normal course of business;

(B) Relate exclusively to the individual in that individual's capacity as an employee; and

(C) Are not available for use for any other purpose.

(ii) Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under paragraph (b)(3)(i) of this definition.

(4) Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are:

(i) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;

(ii) Made, maintained, or used only in connection with treatment of the student; and

(iii) Disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; and

(5) Records that only contain information about an individual after he or she is no longer a student at that agency or institution.

(Authority: 20 U.S.C. 1232g(a)(4))

"Eligible student" means a student who has reached 18 years of age or is attending an institution of postsecondary education.

(Authority: 20 U.S.C. 1232g(d))

"Institution of postsecondary education" means an institution that provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided as determined under State law.

(Authority: 20 U.S.C. 1232g(d))

"Parent" means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.

(Authority: 20 U.S.C. 1232g)

"Party" means an individual, agency, institution, or organization.

(Authority: 20 U.S.C. 1232g(b)(4)(A))

"Personally identifiable information" includes, but is not limited to:

(a) The student's name;
(b) The name of the student's parent or other family member;
(c) The address of the student or student's family;
(d) A personal identifier, such as the student's social security number or student number;
(e) A list of personal characteristics that would make the student's identity easily traceable; or
(f) Other information that would make the student's identity easily traceable.

(Authority: 20 U.S.C. 1232g)

"Record" means any information recorded in any way, including, but not limited to, handwriting, print, tape, film, microfilm, and microfiche.

(Authority: 20 U.S.C. 1232g)

"Secretary" means the Secretary of the U.S. Department of Education or an official or employee of the Department of Education acting for the Secretary under a delegation of authority.

(Authority: 20 U.S.C. 1232g)

"Student," except as otherwise specifically provided in this part, means any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.

(Authority: 20 U.S.C. 1232g(a)(6))

Sec. 99.4 What are the rights of parents?

An educational agency or institution shall give full rights under the Act to either parent, unless the agency or institution has been provided with evidence that there is a court order, State statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights.

(Authority: 20 U.S.C. 1232g)

Sec. 99.5 What are the rights of students?

(a) When a student becomes an eligible student, the rights accorded to, and consent required of, parents under this part transfer from the parents to the student.
(b) The Act and this part do not prevent educational agencies or institutions from giving students rights in addition to those given to parents.
(c) If an individual is or has been in attendance at one component of an educational agency or institution, that attendance does not give the individual rights as a student in other components of the agency or institution to which the individual has applied for admission, but has never been in attendance.

(Authority: 20 U.S.C. 1232g(d))

[53 FR 11943, Apr. 11, 1988, as amended at 58 FR 3188, Jan. 7, 1993]

EFFECTIVE DATE: These regulations take effect on February 16, 1995.

Sec. 99.6 What information must an educational agency's or institution's policy contain?

(a) Each educational agency or institution shall adopt a policy regarding how the agency or institution meets the requirements of the Act and of this part. The policy must include:
(1) How the agency or institution informs parents and students of their rights, in accord with Sec. 99.7;
(2) How a parent or eligible student may inspect and review education records under Sec. 99.10, including at least:
(i) The procedure the parent or eligible student must follow to inspect and review the records;

(ii) With an understanding that it may not deny access to education records, a description of the circumstances in which the agency or institution believes it has a legitimate cause to deny a request for a copy of those records;

(iii) A schedule of fees (if any) to be charged for copies; and

(iv) A list of the types and locations of education records maintained by the agency or institution, and the titles and addresses of the officials responsible for the records;

(3) A statement that personally identifiable information will not be released from an education record without the prior written consent of the parent or eligible student, except under one or more of the conditions described in Sec. 99.31;

(4) A statement indicating whether the educational agency or institution has a policy of disclosing personally identifiable information under Sec. 99.31(a)(1), and, if so, a specification of the criteria for determining which parties are school officials and what the agency or institution considers to be a legitimate educational interest;

(5) A statement that a record of disclosures will be maintained as required by Sec. 99.32, and that a parent or eligible student may inspect and review that record;

(6) A specification of the types of personally identifiable information the agency or institution has designated as directory information under Sec. 99.37; and

(7) A statement that the agency or institution permits a parent or eligible student to request correction of the student's education records under Sec. 99.20, to obtain a hearing under Sec. 99.21(a), and to add a statement to the record under Sec. 99.21(b)(2).

(b) The educational agency or institution shall state the policy in writing and make a copy of it available on request to a parent or eligible student.

(Approved by the Office of Management and Budget under control number 1880-0508)

(Authority: 20 U.S.C. 1232g(e) and (f))

[53 FR 11943, Apr. 11, 1988; 53 FR 19368, May 27, 1988, as amended at 58 FR 3188, Jan. 7, 1993]

Sec. 99.7 What must an educational agency or institution include in its annual notification?

(a) Each educational agency or institution shall annually notify parents of students currently in attendance, and eligible students currently in attendance, at the agency or institution of their rights under the Act and this part. The notice must include a statement that the parent or eligible student has a right to:

(1) Inspect and review the student's education records;

(2) Request the amendment of the student's education records to ensure that they are not inaccurate, misleading, or otherwise in violation of the student's privacy or other rights;

(3) Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that the Act and the regulations in this part authorize disclosure without consent;

(4) File with the U.S. Department of Education a complaint under Sec. 99.64 concerning alleged failures by the agency or institution to comply with the requirements of the act and this part; and

(5) Obtain a copy of the policy adopted under Sec. 99.6.

(b) The notice provided under paragraph (a) of this section must also indicate the places where copies of the policy adopted under Sec. 99.6 are located.

(c) An educational agency or institution may provide this notice by any means that are reasonably likely to inform the parents and eligible students of their rights.

(d) An agency or institution of elementary or secondary education shall effectively notify parents of students who have a primary or home language other than English.

(Approved by the Office of Management and Budget under control number 1880-0508)

(Authority: 20 U.S.C. 1232g(e))

[53 FR 11943, Apr. 11, 1988; 53 FR 19368, May 27, 1988]

SUBPART B--WHAT ARE THE RIGHTS OF INSPECTION AND REVIEW OF EDUCATION RECORDS?

Sec. 99.10 What rights exist for a parent or eligible student to inspect and review education records?

(a) Except as limited under Sec. 99.12, each educational agency or institution shall permit a parent or eligible student to inspect and review the education records of the student.

(b) The educational agency or institution shall comply with a request for access to records within a reasonable period of time, but in no case more than 45 days after it has received the request.

(c) The educational agency or institution shall respond to reasonable requests for explanations and interpretations of the records.

(d) The educational agency or institution shall give the parent or eligible student a copy of the records if failure to do so would effectively prevent the parent or student from exercising the right to inspect and review the records.

(e) The educational agency or institution shall not destroy any education records if there is an outstanding request to inspect and review the records under this section.

(f) While an education agency or institution is not required to give an eligible student access to treatment records under paragraph (b)(4) of the definition of "Education records" in Sec. 99.3, the student may have those records reviewed by a physician or other appropriate professional of the student's choice.

(Authority: 20 U.S.C. 1232g(a)(1)(A))

Sec. 99.11 May an educational agency or institution charge a fee for copies of education records?

(a) Unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review the student's education records, an educational agency or institution may charge a fee for a copy of an education record which is made for the parent or eligible student.

(b) An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.

(Authority: 20 U.S.C. 1232g(a)(1))

Sec. 99.12 What limitations exist on the right to inspect and review records?

(a) If the education records of a student contain information on more than one student, the parent or eligible student may inspect, review, or be informed of only the specific information about that student.

(b) A postsecondary institution does not have to permit a student to inspect and review education records that are:

(1) Financial records, including any information those records contain, of his or her parents;

(2) Confidential letters and confidential statements of recommendation placed in the education records of the student before January 1, 1975, as long as the statements are used only for the purposes for which they were specifically intended; and

(3) Confidential letters and confidential statements of recommendation placed in the student's education records after January 1, 1975, if:

(i) The student has waived his or her right to inspect and review those letters and statements; and

(ii) Those letters and statements are related to the student's:

(A) Admission to an educational institution;

(B) Application for employment; or

(C) Receipt of an honor or honorary recognition.

(c)(1) A waiver under paragraph (b)(3)(i) of this section is valid only if:

(i) The educational agency or institution does not require the waiver as a condition for admission to or receipt of a service or benefit from the agency or institution; and

(ii) The waiver is made in writing and signed by the student, regardless of age.

(2) If a student has waived his or her rights under paragraph (b)(3)(i) of this section, the educational institution shall:

(i) Give the student, on request, the names of the individuals who provided the letters and statements of recommendation; and

(ii) Use the letters and statements of recommendation only for the purpose for which they were intended.

(3)(i) A waiver under paragraph (b)(3)(i) of this section may be revoked with respect to any actions occurring after the revocation.

(ii) A revocation under paragraph (c)(3)(i) of this section must be in writing.

(Authority: 20 U.S.C. 1232g(a)(1)(A) and (B))

SUBPART C--WHAT ARE THE PROCEDURES FOR AMENDING EDUCATION RECORDS?

Sec. 99.20 How can a parent or eligible student request amendment of the student's education records?

(a) If a parent or eligible student believes the education records relating to the student contain information that is inaccurate, misleading, or in violation of the student's rights of privacy or other rights, he or she may ask the educational agency or institution to amend the record.

(b) The educational agency or institution shall decide whether to amend the record as requested within a reasonable time after the agency or institution receives the request.

(c) If the educational agency or institution decides not to amend the record as requested, it shall inform the parent or eligible student of its decision and of his or her right to a hearing under Sec. 99.21.

(Authority: 20 U.S.C. 1232g(a)(2))

[53 FR 11943, Apr. 11, 1988; 53 FR 19368, May 27, 1988]

Sec. 99.21 Under what conditions does a parent or eligible student have the right to a hearing?

(a) An educational agency or institution shall give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information contained in the education records is inaccurate, misleading, or in violation of the privacy or other rights of the student.

(b)(1) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall:

(i) Amend the record accordingly; and

(ii) Inform the parent or eligible student of the amendment in writing.

(2) If, as a result of the hearing, the educational agency or institution decides that the information in the education record is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall inform the parent or eligible student of the right to place a statement in the record commenting on the contested information in the record or stating why he or she disagrees with the decision of the agency or institution, or both.

(c) If an educational agency or institution places a statement in the education records of a student under paragraph (b)(2) of this section, the agency or institution shall:

(1) Maintain the statement with the contested part of the record for as long as the record is maintained; and

(2) Disclose the statement whenever it discloses the portion of the record to which the statement relates.

(Authority: 20 U.S.C. 1232g(a)(2))

Sec. 99.22 What minimum requirements exist for the conduct of a hearing?

The hearing required by Sec. 99.21 must meet, at a minimum, the following requirements:

(a) The educational agency or institution shall hold the hearing within a reasonable time after it has received the request for the hearing from the parent or eligible student.

(b) The educational agency or institution shall give the parent or eligible student notice of the date, time, and place, reasonably in advance of the hearing.

(c) The hearing may be conducted by any individual, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing.

(d) The educational agency or institution shall give the parent or eligible student a full and fair opportunity to present evidence relevant to the issues raised under Sec. 99.21. The parent or eligible student may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.

(e) The educational agency or institution shall make its decision in writing within a reasonable period of time after the hearing.

(f) The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.

(Authority: 20 U.S.C. 1232g(a)(2))

SUBPART D--MAY AN EDUCATIONAL AGENCY OR INSTITUTION DISCLOSE PERSONALLY IDENTIFIABLE INFORMATION FROM EDUCATION RECORDS?

Sec. 99.30 Under what conditions is prior consent required to disclose information?

(a) The parent or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records, except as provided in Sec. 99.31.

(b) The written consent must:

(1) Specify the records that may be disclosed;

(2) State the purpose of the disclosure; and

(3) Identify the party or class of parties to whom the disclosure may be made.

(c) When a disclosure is made under paragraph (a) of this section:

(1) If a parent or eligible student so requests, the educational agency or institution shall provide him or her with a copy of the records disclosed; and

(2) If the parent of a student who is not an eligible student so requests, the agency or institution shall provide the student with a copy of the records disclosed.

(Authority: 20 U.S.C. 1232g(b)(1) and (b)(2)(A))

[53 FR 11943, Apr. 11, 1988, as amended at 58 FR 3189, Jan. 7, 1993]

Sec. 99.31 Under what conditions is prior consent not required to disclose information?

(a) An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by Sec. 99.30 if the disclosure meets one or more of the following conditions:

(1) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.

(2) The disclosure is, subject to the requirements of Sec. 99.34, to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll.

(3) The disclosure is, subject to the requirements of Sec. 99.35, to authorized representatives of:

(i) The Comptroller General of the United States;

(ii) The Secretary; or

(iii) State and local educational authorities.

(4)(i) The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to:

(A) Determine eligibility for the aid;

(B) Determine the amount of the aid;

(C) Determine the conditions for the aid; or

(D) Enforce the terms and conditions of the aid.

(ii) As used in paragraph (a)(4)(i) of this section, "financial aid" means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an educational agency or institution.

(Authority: 20 U.S.C. 1232g(b)(1)(D))

(5)(i) The disclosure is to State and local officials or authorities, if a State statute adopted before November 19, 1974, specifically requires disclosures to those officials and authorities.

(ii) Paragraph (a)(5)(i) of this section does not prevent a State from further limiting the number or type of State or local officials to whom disclosures may be made under that paragraph.

(6)(i) The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to:

(A) Develop, validate, or administer predictive tests;

(B) Administer student aid programs; or

(C) Improve instruction.

(ii) The agency or institution may disclose information under paragraph (a)(6)(i) of this section only if:

(A) The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization; and

(B) The information is destroyed when no longer needed for the purposes for which the study was conducted.

(iii) For the purposes of paragraph (a)(6) of this section, the term "organization" includes, but is not limited to, Federal, State, and local agencies, and independent organizations.

(7) The disclosure is to accrediting organizations to carry out their accrediting functions.

(8) The disclosure is to parents of a dependent student, as defined in Sec. 152 of the Internal Revenue Code of 1954.

(9)(i) The disclosure is to comply with a judicial order or lawfully issued subpoena.

(ii) The educational agency or institution may disclose information under paragraph (a)(9)(i) of this section only if the agency or institution makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance.

(10) The disclosure is in connection with a health or safety emergency, under the conditions described in Sec. 99.36.

(11) The disclosure is information the educational agency or institution has designated as "directory information," under the conditions described in Sec. 99.37.

(12) The disclosure is to the parent of a student who is not an eligible student or to the student.

(13) The disclosure is to an alleged victim of any crime of violence, as that term is defined in Sec. 16 of title 18, United States Code, of the results of any disciplinary proceeding conducted by an institution of postsecondary education against the alleged perpetrator of that crime with respect to that crime.

(b) This section does not forbid an educational agency or institution to disclose, nor does it require an educational agency or institution to disclose, personally identifiable information from the education records of a student to any parties under paragraphs (a)(1) through (11) and (13) of this section.

(Authority: 20 U.S.C. 1232g(a)(5)(A), (b)(1), (b)(2)(B) and (b)(6))

[53 FR 11943, Apr. 11, 1988; 53 FR 19368, May 27, 1988, as amended at 58 FR 3189, Jan. 7, 1993]

Sec. 99.32 What recordkeeping requirements exist concerning requests and disclosures?

(a)(1) An educational agency or institution shall maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student.

(2) The agency or institution shall maintain the record with the education records of the student as long as the records are maintained.

(3) For each request or disclosure the record must include:

(i) The parties who have requested or received personally identifiable information from the education records; and

(ii) The legitimate interests the parties had in requesting or obtaining the information.

(b) If an educational agency or institution discloses personally identifiable information from an education record with the understanding authorized under Sec. 99.33(b), the record of the disclosure required under this section must include:

(1) The names of the additional parties to which the receiving party may disclose the information on behalf of the educational agency or institution; and

(2) The legitimate interests under Sec. 99.31 which each of the additional parties has in requesting or obtaining the information.

(c) The following parties may inspect the record relating to each student:

(1) The parent or eligible student.

(2) The school official or his or her assistants who are responsible for the custody of the records.

(3) Those parties authorized in Sec. 99.31(a)(1) and (3) for the purposes of auditing the recordkeeping procedures of the educational agency or institution.

(d) Paragraph (a) of this section does not apply if the request was from, or the disclosure was to:

(1) The parent or eligible student;

(2) A school official under Sec. 99.31(a)(1);

(3) A party with written consent from the parent or eligible student; or

(4) A party seeking directory information.

(Authority: 20 U.S.C. 1232g(b)(4)(A))

(Approved by the Office of Management and Budget under control number 1880-0508)

Sec. 99.33 What limitations apply to the redisclosure of information?

(a)(1) An educational agency or institution may disclose personally identifiable information from an education record only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior consent of the parent or eligible student.

(2) The officers, employees, and agents of a party that receives information under paragraph (a)(1) of this section may use the information, but only for the purposes for which the disclosure was made.

(b) Paragraph (a) of this section does not prevent an educational agency or institution from disclosing personally identifiable information with the understanding that the party receiving the information may make further disclosures of the information on behalf of the educational agency or institution if:

(1) The disclosures meet the requirements of Sec. 99.31; and

(2) The educational agency or institution has complied with the requirements of Sec. 99.32(b).

(c) Paragraph (a) of this section does not apply to disclosures of directory information under Sec. 99.31(a)(11) or to disclosures to a parent or student under Sec. 99.31(a)(12).

(d) Except for disclosures under Sec. 99.31(a)(11) and (12), an educational agency or institution shall inform a party to whom disclosure is made of the requirements of this section.

(Authority: 20 U.S.C. 1232g(b)(4)(B))

Sec. 99.34 What conditions apply to disclosure of information to other educational agencies or institutions?

(a) An educational agency or institution that discloses an education record under Sec. 99.31(a)(2) shall:

(1) Make a reasonable attempt to notify the parent or eligible student at the last known address of the parent or eligible student, unless:

(i) The disclosure is initiated by the parent or eligible student; or

(ii) The policy of the agency or institution under Sec. 99.6 includes a notice that the agency or institution forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll;

(2) Give the parent or eligible student, upon request, a copy of the record that was disclosed; and

(3) Give the parent or eligible student, upon request, an opportunity for a hearing under Subpart C.

(b) An educational agency or institution may disclose an education record of a student in attendance to another educational agency or institution if:

(1) The student is enrolled in or receives services from the other agency or institution; and

(2) The disclosure meets the requirements of paragraph (a) of this section.

(Authority: 20 U.S.C. 1232g(b)(1)(B))

Sec. 99.35 What conditions apply to disclosure of information for Federal or State program purposes?

(a) The officials listed in Sec. 99.31(a)(3) may have access to education records in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements which relate to those programs.

(b) Information that is collected under paragraph (a) of this section must:

(1) Be protected in a manner that does not permit personal identification of individuals by anyone except the officials referred to in paragraph (a) of this section; and

(2) Be destroyed when no longer needed for the purposes listed in paragraph (a) of this section.

(c) Paragraph (b) of this section does not apply if:

(1) The parent or eligible student has given written consent for the disclosure under Sec. 99.30; or

(2) The collection of personally identifiable information is specifically authorized by Federal law.

(Authority: 20 U.S.C. 1232g(b)(3))

Sec. 99.36 What conditions apply to disclosure of information in health and safety emergencies?

(a) An educational agency or institution may disclose personally identifiable information from an education record to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

(b) Paragraph (a) of this section shall be strictly construed.

(Authority: 20 U.S.C. 1232g(b)(1)(I))

[53 FR 11943, Apr. 11, 1988; 53 FR 19368, May 27, 1988]

Sec. 99.37 What conditions apply to disclosing directory information?

(a) An educational agency or institution may disclose directory information if it has given public notice to parents of students in attendance and eligible students in attendance at the agency or institution of:

(1) The types of personally identifiable information that the agency or institution has designated as directory information;

(2) A parent's or eligible student's right to refuse to let the agency or institution designate any or all of those types of information about the student as directory information; and

(3) The period of time within which a parent or eligible student has to notify the agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information.

(b) An educational agency or institution may disclose directory information about former students without meeting the conditions in paragraph (a) of this section.

(Authority: 20 U.S.C. 1232g(a)(5)(A) and (B))

SUBPART E--WHAT ARE THE ENFORCEMENT PROCEDURES?

Sec. 99.60 What functions has the Secretary delegated to the Office and to the Office of Administrative Law Judges?

(a) For the purposes of this subpart, "Office" means the Family Policy Compliance Office, U.S. Department of Education.

(b) The Secretary designates the Office to:

(1) Investigate, process, and review complaints and violations under the Act and this part; and

(2) Provide technical assistance to ensure compliance with the Act and this part.

(c) The Secretary designates the Office of Administrative Law Judges to act as the Review Board required under the Act to enforce the Act with respect to all applicable programs. The term "applicable program" is defined in Sec. 400 of the General Education Provisions Act.

(Authority: 20 U.S.C. 1232g(f) and (g), 1234)

[53 FR 11943, Apr. 11, 1988, as amended at 58 FR 3189, Jan. 7, 1993]

Sec. 99.61 What responsibility does an educational agency or institution have concerning conflict with State or local laws?

If an educational agency or institution determines that it cannot comply with the Act or this part due to a conflict with State or local law, it shall notify the Office within 45 days, giving the text and citation of the conflicting law.

(Authority: 20 U.S.C. 1232g(f))

Sec. 99.62 What information must an educational agency or institution submit to the Office?

The Office may require an educational agency or institution to submit reports containing information necessary to resolve complaints under the Act and the regulations in this part.

(Authority: 20 U.S.C. 1232g(f) and (g))

Sec. 99.63 Where are complaints filed?

A person may file a written complaint with the Office regarding an alleged violation under the Act and this part. The Office's address is: Family Policy Compliance Office, U. S. Department of Education, Washington, D.C. 20202-4605.

(Authority: 20 U.S.C. 1232g(g))

[58 FR 3189, Jan. 7, 1993]

Sec. 99.64 What is the complaint procedure?

(a) A complaint filed under Sec. 99.63 must contain specific allegations of fact giving reasonable cause to believe that a violation of the Act or this part has occurred.

(b) The Office investigates each timely complaint to determine whether the educational agency or institution has failed to comply with the provisions of the Act or this part.

(c) A timely complaint is defined as an allegation of a violation of the Act that is submitted to the Office within 180 days of the date of the alleged violation or of the date that the complainant knew or reasonably should have known of the alleged violation.

(d) The Office extends the time limit in this section if the complainant shows that he or she was prevented by circumstances beyond the complainant's control from submitting the matter within the time limit, or for other reasons considered sufficient by the Office.

(Authority: 20 U.S.C. 1232g(f))

[53 FR 11943, Apr. 11, 1988, as amended at 58 FR 3189, Jan. 7, 1993]

Sec. 99.65 What is the content of the notice of complaint issued by the Office?

(a) The Office notifies the complainant and the educational agency or institution in writing if it initiates an investigation of a complaint under Sec. 99.64(b).

The notice to the educational agency or institution--

(1) Includes the substance of the alleged violation; and

(2) Asks the agency or institution to submit a written response to the complaint.

(b) The Office notifies the complainant if it does not initiate an investigation of a complaint because the complaint fails to meet the requirements of Sec. 99.64.

(Authority: 20 U.S.C. 1232g(g))

[58 FR 3189, Jan. 7, 1993]

Sec. 99.66 What are the responsibilities of the Office in the enforcement process?

(a) The Office reviews the complaint and response and may permit the parties to submit further written or oral arguments or information.

(b) Following its investigation, the Office provides to the complainant and the educational agency or institution written notice of its findings and the basis for its findings.

(c) If the Office finds that the educational agency or institution has not complied with the Act or this part, the notice under paragraph (b) of this section:

(1) Includes a statement of the specific steps that the agency or institution must take to comply; and

(2) Provides a reasonable period of time, given all of the circumstances of the case, during which the educational agency or institution may comply voluntarily.

(Authority: 20 U.S.C. 1232g(f))

Sec. 99.67 How does the Secretary enforce decisions?

(a) If the educational agency or institution does not comply during the period of time set under Sec. 99.66(c), the Secretary may, in accordance with part E of the General Education Provisions Act--

(1) Withhold further payments under any applicable program;

(2) Issue a compliant to compel compliance through a cease-and-desist order; or

(3) Terminate eligibility to receive funding under any applicable program.

(b) If, after an investigation under Sec. 99.66, the Secretary finds that an educational agency or institution has complied voluntarily with the Act or this part, the Secretary provides the complainant and the agency or institution written notice of the decision and the basis for the decision.

(Note: 34 CFR Part 78 contains the regulations of the Education Appeal Board.)

(Authority: 20 U.S.C. 1232g(f); 20 U.S.C. 1234)

[53 FR 11943, Apr. 11, 1988; 53 FR 19368, May 27, 1988, as amended at 58 FR 3189, Jan. 7, 1993]

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